

REMARKS

Upon entry of the foregoing amendments, claims 1-8 are pending and claims 9-11 have been withdrawn. Claim 1 is amended to clarify the inventive subject matter of the present application. Basis for this amendment is found in the present specification at page 3, lines 27-34. Accordingly, these amendments do not introduce any new subject matter within the meaning of 35 U.S.C. §132 and entry of the amendments is respectfully requested.

REJECTION OF CLAIMS 1-8 UNDER 35 U.S.C. §103(a)

The Examiner has rejected claims 1-8 under 35 U.S.C. §103(a) as being unpatentable over Canadian Patent No. CA 1,143,651 to Lemon in view of U.S. Patent No. 2,656,649 to Ostier, as follows:

Regarding claims 1, 6, 7, and 8, Lemon teaches a method for the protection of germinating seeds with a pesticide, characterized in that seed and pesticide-containing pellets (Lemon page 1 line 8-13; page 2 line 15; page 2 line 18); Lemon teaches the pesticide granule, i.e., pellet, are sown as individually at the same time; the pesticide-containing pellet comprises an inert core or a killed seed as a core and wherein said pesticide is located around said core (Lemon Page 4 line 16-25 and page 5).

Lemon teaches a seed, but is silent on the seed being a seed containing pellet. However, Ostier teaches that it is old and notoriously well-known to pelletize seeds (Ostier title). I would have been obvious to one of skill in the art to modify the teachings of Lemon with the seed pellet teachings of Ostier for the advantage of preventing the seed from breaking during transport and sowing and to provide proof against any variation of temperature or atmospheric moisture as taught by Ostier (Ostier col. 1 line 16-21).

Regarding claim 2, Lemon as modified teaches the pesticide-containing pellets are substantially the same shape and size as the seed-containing pellets (Lemon page 3 line 11-15).

Regarding claim 3, Lemon as modified teaches that the pesticide-containing pellets comprise a dose of pesticide that is sufficient for one seed germ (Lemon Page 1 line 13-19; Lemon page 2, line 18-23 and Ostier col 1, line 14).

Regarding claim 4, Lemon as modified teaches that the pesticide-containing pellets sufficient contain a filler material (Lemon page 11 line 18).

Regarding claim 5, Lemon as modified teaches the pesticide-containing pellets and the seed-containing pellets have a substantially uniform diameter from 0.5-5mm (Lemon 1 line 11-10 and page 3 line 25).

Applicants respectfully traverse this rejection. The Examiner has failed to establish a prima facie case of obviousness. In the first instance, the combination of references fails to teach each and every limitation of the present claims. Furthermore, it has not been demonstrated that one of skill in the art would have been motivated to create the method of protecting a germinating seed with a pesticide, characterized by seed-containing pellets and pesticide-containing pellets sown individually and at the same time and wherein the pesticide-containing pellet comprises an inert core or a killed seed core surrounded by pesticide and wherein the core when it is an inert core comprises a glass-bead, perlite, plastic or pumice using the teachings of Lemon and Ostier.

In contrast to the claims of the present application, the primary reference, Lemon, teaches granules containing bendiocarb, a pesticide. These granules may be produced by adhering the

bendiocarb to a "botanical base" such as "walnut shell, peanut shell, wood chips or especially corn cob grit". See Lemon page 4, lines 16-25. Lemon contains no express or implied teaching that the core may be a killed seed, or an inert core comprising a glass bead, perlite, plastic or pumice.

The secondary reference, Ostier, fails to remedy the deficiencies of Lemon. Specifically, Ostier relates generally to seed coatings rather than pesticide-containing pellets, let alone pesticide-containing pellets having a killed seed core or an inert core comprising a glass-bead, perlite, plastic or pumice.

Therefore, the combination of references fails to teach either expressly or impliedly each of the limitations as presently claimed in claims 1-8 of the application. Accordingly, a *prima facie* case of obviousness has not been established.

Additionally, it has not been demonstrated that there would have been a reasonable expectation of success for one of skill in the art to take the bendicarb granules of Lemon and combine them with the general seed coatings of Ostier to arrive at the presently claimed invention. As such, a *prima facie* case of obviousness has not been established.

As such, Applicants respectfully request the Examiner to reconsider and withdraw this rejection to claims 1-8.

CONCLUSION

In view of the foregoing, applicants respectfully request the Examiner to reconsider and withdraw the rejection to claims 1-8 pending in this application.

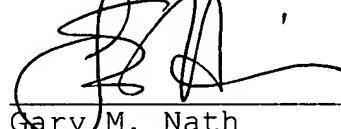
If the Examiner has any questions or wishes to discuss this matter, the Examiner is welcomed to telephone the undersigned attorney.

Respectfully submitted,

NATH & ASSOCIATES PLLC

Date:

May 3, 2005



Gary M. Nath
Reg. No. 26,965
Tanya E. Harkins
Reg. No. 52,993
Customer No. 20529

NATH & ASSOCIATES PLLC
1030 Fifteenth Street, N.W.
Sixth Floor
Washington, D.C. 20005-1503
Tel: (202) 775-8383
Fax: (202) 775-8396